Office-Supreme Court, U.S.
FILED
JUN 18 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1007

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

TIFFANY FINE ARTS INC., *et. al.*,
Petitioners-Appellants,

v.

UNITED STATES OF. AMERICA, *et. al.*,
Respondents-Appellees.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

---

JOINT APPENDIX

MICHAEL SAVAGE
GERSTEN, SAVAGE & KAPLOWITZ
150 East 58th Street
New York, New York 10155
(212) 752-9700

REX E. LEE
Solicitor General
DEPARTMENT OF JUSTICE
Washington, D.C. 20530
(202) 633-2217

PRESS OF BYRON S. ADAMS PRINTING, WASHINGTON, D.C. (202) 347-8203

PETITION FOR CERTIORARI FILED DECEMBER 19, 1983
CERTIORARI GRANTED APRIL 2, 1984

39 pp
4 foldout

BEST AVAILABLE COPY

TABLE OF CONTENTS

		Page
1.	Relevant docket entries—U.S. District Court, Southern District of New York	1a
2.	Relevant docket entries—U.S. Court of Appeals Second Circuit	3a
3.	Summonses served on Tiffany Fine Arts, Inc., and Subsidaries	4a
4.	Order to show cause, District Court	8a
5.	Verified Petition to Enforce Internal Revenue Service Summons	10a
6.	Affidavit of (Revenue Agent) Joel Lewis	14a
7.	Affidavit (of Tiffany officer) in Opposition to Order to Show Cause	16a
8.	Supplemental Affidavit (of Revenue Agent Joel Lewis)	21a
9.	Transcript of hearing on Order to Show Cause	26a
10.	Order of U.S. District Court	38a
11.	Decision of U.S. Court of Appeals for the Second Circuit—Reference to Petitioners' Petition for Certiorari	40a

1. Relevant docket entries, U.S. District Court, Southern District of New York

PROCEEDINGS

11-9-82 — IN RE: USA AND JOEL LEWIS v TIFFANY FINE ARTS: Fld Memo of Petitioner in support OF THEIR VERIFIED PETITION TO ENFORCE AN INTERNAL REVENUE Service Summons.

11-09-82 — U.S.A. & JOEL LEWIS, IRS -VS- TIFFANY FINE ARTS, INC, ET AL: Fld. O.T.S.C., iss. ret. 11-23-82, at 10:00 Am. in Ct. Rm. 110, Part 1, to compel resp. to comply with IRS summons. . . . Cooper, J.

11-22-82 — IN RE: USA AND JOEL LEWIS v TIFFANY FINE ARTS: Fld Aff't In opposition to Order to show cause by the USA to enforce various summonses allegedly derived upon Tiffany Fine Arts et al, By president of Tiffany Fine Arts.

11-22-82 — USA NAD JOEL LEWIS v TIFFANY FINE ARTS: Fld Memo of law on behalf of Resp's motion to enforce the IRS summons.

11-26-82 — USA AND JOEL LEWIS v TIFFANY FINE ARTS: Fld supplemental aff't of Joel Lewis in support of the petition to enforce the IRS summons.

11-26-82 — USA and JOEL LEWIS v TIFFANY FINE ARTS: Fld Petitioner's reply memo of law in support of their verified petition to enforce an IRS summons.

11-26-82 — USA AND JOEL LEWIS v TIFFANY FINE ARTS: Fld Order that resp shall comply fully with the IRS summons served upon them on 10-6-81. So Ordered BRODRICK J. Dated 11-24.

12-7-82 — USA and JOEL LEWIS V. TIFFANY FINE ARTS, INC. Fld. ORDER TO SHOW CAUSE ret. December 13, 1982 at 9:00 a.m. or as soon as counsil can be heard, with a stay of an order issued on November 24, 1982, enforcing a summons by the IRS SHOULD NOT ISSUE PENDING RESOLUTION OF AN APPEAL OF SAID ORDER, AND IT IS FURTHER ORDERED that personal service on the peitioner of a copy of this order and the papers shall be

serviced by December 10, 1982 by 5:00 p.m... Judge Broderick.

12-8-82 — USA AND JOEL LEWIS v TIFFANY FINE ARTS: Fld Notice of Appeal that Tiffany Fine Arts hereby appeal the U.S. Court of Appeals from the order of the U.S.D.C. Southern District enforcing an IRS summons against Resp entered on the 24th day of November. By Atty for Resp.

12-14-82 — USA and JOEL LEWIS V. TIFFANY FINE ARTS, INC: Fld. MEMO ENDORSED on OTSC RET. Dec. 13, 1982, with PETTIION MEMORANDUM OF LAW and transcript dated Nov. 24, 1982, that APPLICATION GRANTED. Respondent and Petitioners to submit order which memoralized various stipulations as to statute of limitation expedition, etc. Judge Broderick.

1-18-83 — USA & JOEL LEWIS V. TIFFANY FINE ARTS INC: Fld. Order that respondent having moved, by order to show cause dated 12-7-82, for a stay of an order of this court, dated 11-24-82, enforcing certain IRS Summonses served on 10-6-1982. It is hereby Ordered that said Application is granted. That the execution of the District Court order directing petitioner's summons served 10-6-81, is stayed pending the hearing. That respondents execute such IRS form 872 waivers as are at least sufficient to supend, etc. That the respondent will join in and consent to the petitioners' request for an expedited appeal; and that the respondent will perfect the docketing of their appeal herein promptly and in no event later than Dec. 17, 1982. IT IS SO ORDERED . . . Judge Broderick.

2. Relevant docket entries, U.S. Court of Appeals, Second Circuit

FILINGS—PROCEEDINGS

12-09-82 — Copy of district court docket entries and notice of appeal on behalf of Appellant Tiffany Fine Arts, et al. filed.

1-31-83 — Appellant Tiffany Fine Arts, et al. brief filed. (w/ pfs)

1-31-83 — Appellant Tiffany Fine Arts, et al appendix filed. (w/pfs)

02-18-83 — Appellee USA et al page proofs of briefs w/pfs filed.

02-22-83 — Appellee USA et al briefs w/pfs filed.

03-07-83 — Appellant Tiffany Fine Art, In et al reply briefs w/pfs filed.

3-28-83 — Case argued before: Kearse, Pierce, Pratt CJJ

9-13-83 — Judgment affirmed by published opinion filed (Pratt)

9-13-83 — Judgment filed

9-27-83 — Appellants Tiffany Fine Art, Inc., et al., petition for rehearing with a suggestion for rehearing in banc filed. (w/pfs)

10-28-83 — Order denying appellants Tiffany Fine Art, Inc, et al., petition for rehearing with a suggestion for rehearing in banc filed.

11-4-83 — Appellants Tiffany Fine Arts, et al. motion to stay mandate pending application to the Supreme Court for writ of certiorari w/pfs filed.

11-21-83 — Order granting Appellants' Tiffany Fine Arts, Inc. stay of mandate pending application for writ of certiorari filed (endorsed on motion filed 11/4/83) ALK; LWP; GCP

EDITOR'S NOTE

PAGES 4a through 7a WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

3. Summonses served on Tiffany Fine Arts Inc. and subsidiaries

Form 2039-C (Rev. Jan. 1981)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Tiffany Fine Arts Inc. & Subsidiaries

Internal Revenue District of Brooklyn Periods 7910 & 8010

The Commissioner of Internal Revenue

To Steven Hofstein, as President of Tiffany Fine Arts Inc.

At 545 Madison Avenue, New York, New York 10022

You are hereby summoned and required to appear before Joel Levin

an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

(1) All books, papers, records and other data pertaining to the operation of Tiffany Fine Arts Inc and subsidiaries (including World Medical Marketing Corp.) for the periods ending October 31, 1979 and October 31, 1980, including but not limited to the following specific records: general ledger, sales journal, purchase book, cash receipts book, cash disbursement book, cancelled checks and bank statements, workpapers, sales contracts, and purchase invoices for the above described periods.

(2) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired Tiffany Fine Arts Inc., World Medical Marketing Corporation Inc., World Medical Marketing Corporation, World Video Corporation or any other subsidiary corporation of Tiffany Fine Arts Inc.

(3) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired lithographs from Tiffany Fine Arts Inc.

(b) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired any asset, distributorships etc. from Tiffany Fine Arts Inc., World Medical Marketing Corporation, World Video Corporation or any other subsidiary corporation of Tiffany Fine Arts Inc.

Business address and telephone number of Internal Revenue Service officer named above:

114 Old Country Road, Mineola, New York 11501 Tel: (516) 294-5719

Place and time for appearance:

at 114 Old Country Road, Mineola, New York 11501

on the 21 day of October 19 81 at 10 o'clock A M.

Issued under authority of the Internal Revenue Code this 6 day of October, 19 81

Joel Levin — Signature of Issuing Officer

Internal Revenue Agent — Title

Signature of Approving Officer (if applicable)

Title

Part C — To be given to noticee

Form 2039-C (Rev. 1-81)

4a

Form 2039
(Rev. Jan. 1961)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Tiffany Fine Arts Inc. & Subsidiaries

Internal Revenue District of Brooklyn Periods 7910 & 8010

The Commissioner of Internal Revenue

To [illegible] Secretary of Tiffany Fine Arts Inc.

At 545 Madison Avenue, New York, New York 10022

You are hereby summoned and required to appear before Joel Lewis
an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

(1) All books, papers, records and other data pertaining to the operation of Tiffany Fine Arts Inc and subsidiaries (including World Medical Marketing Corp.) for the periods ending October 31, 1979 and October 31, 1980, including but not limited to the following specific records: general ledger, sales journal, purchase book, cash receipts book, cash disbursement book, cancelled checks and bank statements, workpapers, sales contracts, and purchase invoices for the above described periods.

(2) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired: Pedi-Pulsor distributorships from World Medical Marketing Corporation Inc., World Medical Marketing Corporation, World Video Corporation or any other subsidiary corporation of Tiffany Fine Arts Inc.

(3) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired lithographs from Tiffany Fine Arts Inc.

(4) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired any asset, distributorship etc. from Tiffany Fine Arts Inc., World Medical Marketing Corporation, World Video Corporation or any other subsidiary corporation of Tiffany Fine Arts Inc.

Business address and telephone number of Internal Revenue Service officer named above:

114 Old Country Road, Mineola, New York 11501 Tel: (516) 294-3719

Place and time for appearance:

at 114 Old Country Road, Mineola, New York 11501

on the 21 day of October 19 81 at 10 o'clock A M.

Issued under authority of the Internal Revenue Code this 5 day of October, 19 81

Joel Lewis — Internal Revenue Agent
Signature of Issuing Officer — Title

Signature of Approving Officer (if applicable) — Title

Original to be kept by IRS

Form 2039 (Rev. 1-61)

58

Form 2039-C
(Rev. Jan. 1981)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Tiffany Fine Arts Inc. and Subsidiaries

Internal Revenue District of Brooklyn Periods FYE 7910 & 8010

The Commissioner of Internal Revenue

To Peter Rosenthal, as President of World Medical Marketing Corp

At 545 Madison Avenue, New York, New York 10022

You are hereby summoned and required to appear before Joel Lewis
an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

(1) All books, papers, records and other data pertaining to the operation of World Medical Marketing Corporation (a subsidiary of Tiffany Fine Arts Inc.) for the periods ending October 31, 1979 and October 31, 1980, including but not limited to the following specific records: general ledger, sales journal, purchase book, cash receipts book, cash disbursement book, cancelled checks and bank statements, work papers, sales contracts and purchase invoices for the above described periods.

(2) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who received Medi-Taler distributorships from World Medical Marketing Corporation. Also copies of the application for license that each signed by each licensee.

6a

Business address and telephone number of Internal Revenue Service officer named above:

114 Old Country Road, Mineola, New York 11501 Tel: (516) 294-3719

Place and time for appearance:

at 114 Old Country Road, Mineola, New York 11501

on the 21 day of October 19 81 at 10 o'clock A M.

Issued under authority of the Internal Revenue Code this 6 day of October, 19 81

Joel Lewis
Signature of Issuing Officer

Internal Revenue Agent
Title

Signature of Approving Officer (if applicable)

Title

Part C — To be given to noticee

Form 2039-C (Rev. 1-81)

Form 0 (1981)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of TIFFANY FINE ARTS INC. AND SUBSIDIARIES

Internal Revenue District of Brooklyn Periods FYE 7910 & 8010

The Commissioner of Internal Revenue

To Janice Martinez, Custodian of World Medical Marketing Corp

At 545 Madison Avenue, New York, New York 10022

You are hereby summoned and required to appear before Joel Levis
an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

(1) All books, papers, records and other data pertaining to the operation of World Medical Marketing Corporation (a subsidiary of Tiffany Fine Arts Inc.) for the periods ending October 31, 1979 and October 31, 1980, including but not limited to the following specific records: general ledger, sales journal, purchase book, cash receipts book, cash disbursement book, canceled checks and bank statements, workpapers, sales contracts and purchase invoices for the above described periods.

(2) A list of the names, addresses, social security and employer identification numbers for all individuals, partnerships, estates, trusts and corporations who acquired Pedi-Pulsor distributorships from World Medical Marketing Corporation. Also copies of the application for license fact sheet signed by each licensee.

73

Business address and telephone number of Internal Revenue Service officer named above:

114 Old Country Road, Mineola, New York 11501 Tel: (516) 294-3719

Place and time for appearance:

at 114 Old Country Road, Mineola, New York 11501

on the 28 day of October, 19 81 at 10 o'clock A M.

Issued under authority of the Internal Revenue Code this 5 day of October, 19 81

Joel A. Levis — Signature of Issuing Officer

Internal Revenue Agent — Title

Signature of Approving Officer (if applicable)

Title

Original to be kept by IRS

Form 2039 (Rev. 1-81)

4. Order to show cause, District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue Service,
Petitioners,

v.

TIFFANY FINE ARTS, INC. and its subsidiaries,
including WORLD MEDICAL MARKETING CORP. and
WORLD VIDEO CORP.,
Respondents.

ORDER TO SHOW CAUSE

NOTICE: THIS IS A COURT ORDER WHICH REQUIRES YOU TO APPEAR IN PERSON IN ROOM 110, UNITED STATES COURTHOUSE, FOLEY SQUARE, NEW YORK, NEW YORK 10007 AT 10:00 A.M. ON November 23, 1982

U.S. DISTRICT COURT
FILED 11/9/82
OF NEW YORK

Upon the Petition, together with the exhibits attached thereto, including the affidavit of Joel Lewis of the Internal Revenue Service, and upon the motion of the Honorable John S. Martin, Jr., United States Attorney for the Southern District of New York:

IT IS ORDERED that the respondent appear before the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York, in Part One, Room 110 on November 23, 1982 at

10:00 A.M., to show cause why the respondent should not be compelled to testify and produce the books, records and other papers demanded in the Internal Revenue Service summons served upon the respondents on October 6, 1981 and annexed to the Petition as Exhibit B and

IT IS FURTHER ORDERED that a copy of this order together with the Petition and annexed exhibits be personally served upon the respondents by the United States Marshal, or, in the alternative, by an official of the Internal Revenue Service on or before November 16, 1982 and

IT IS FURTHER ORDERED that within five (5) days after service of copies of this order, the Petition and annexed exhibits upon them, the respondent and any intervening party shall file and serve a written response to the Petition, supported by appropriate affidavit(s), as well as any motions they desire to make. All motions and issues raised by the pleadings will be considered on the return date of this order. Only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit will be considered at the return of this order, and any uncontested allegation in the Petition will be considered admitted.

Dated: New York, New York
November 5, 1982

Irving Ben-Cooper
IRVING BEN-COOPER
United States District Judge
(PART ONE)

5. Verified Petition to Enforce Internal Revenue Service Summons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue Service,
Petitioners,

v.

TIFFANY FINE ARTS, INC. and its subsidiaries,
including WORLD MEDICAL MARKETING CORP. and
WORLD VIDEO CORP.,
Respondents.

VERIFIED PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

The United States of America and Joel Lewis, Revenue Agent, by their attorney, John S. Martin, Jr., United States Attorney for the Southern District of New York, allege on information and belief:

1. This is a proceeding brought under the authority of Sections 7402(b) and 7604 (a) of the Internal Revenue Code of 1954, 26 U.S.C. §§ 7402(b) and 7604(a), to enforce judicially an Internal Revenue Service summons.

2. The respondents Tiffany Fine Arts, Inc., and its subsidiaries, including World Medical Marketing Corp. and World Video Corp. (the "respondents"), are within the jurisdiction of this Court.

3. Petitioner, Joel Lewis, is employed as a Revenue Agent in the Office of the District Director of Internal Revenue, Brooklyn District, with a post of duty at 114 Old Country Road, Mineola, New York.

4. Petitioner, Joel Lewis, is conducting an investigation, one purpose of which is to ascertain the correctness of the consolidated corporate income tax returns filed by the respondents for the fiscal years ending October 31, 1979, and October 31, 1980, as is more fully set forth in the Revenue Agent's affidavit, annexed as Exhibit A.

5. The respondents are in possession or control of books, records and other papers or have knowledge relating to the subject of the petitioners' investigation.

6. On October 6, 1981, Internal Revenue Service summonses, copies of which are annexed as Exhibit B, were duly issued directing the respondents to appear and to testify and produce for examination books, records and other papers more fully described in the summons. Copies of these summonses were served on respondents at the time and in the manner indicated on Exhibits B at page 2.

7. The books, papers, records or other data and information sought by the summonses are not in petitioners' possession.

8. The testimony and documents sought by the summonses may be relevant to and can reasonably be expected to cast light upon the subject of petitioners' investigation concerning the correctness of the aforementioned consolidated corporate income tax returns.

9. On October 19, 1981, Revenue Agent Lewis received a letter signed by the attorneys of respondent World Medical Marketing Corp. ("World"), Robson & Miller, which stated that the respondent World would not comply with the summonses served on it. The respondent World's failure to comply with the summonses continues to date, as is set forth in the attached affidavit, Exhibit A.

10. Neither respondent Tiffany Fine Arts, Inc., nor any of respondent's subsidiaries (other than World) objected to the summonses. In every case, there has been a failure to comply with the summonses and that failure continues to date as is set forth in the attached affidavit, Exhibit A.

11. It is the practice of this Court to proceed by Order to Show Cause in these matters.

12. No previous application has been made for the [remainder of sentence omitted in original].

WHEREFORE, the petitioners respectfully pray:

1. That this Court enter an order directing the respondents to show cause why the respondents should not comply with and obey the attached summonses;

2. That this Court enter an order directing the respondents to obey the summonses by ordering the production of the records called for by the terms of the summons before any proper officer of the Internal Revenue Service, at such time and place as hereafter may be fixed by such officer and by ordering the respondent to appear for the purpose of giving testimony; and

3. That this Court grant such other and further relief as it deems just and proper.

Dated: New York
November 5, 1982

JOHN S. MARTIN, JR.
United States Attorney for the
Southern District of New York
Attorney for Petitioner

By: Jamie Vincent Gregg
JAMIE VINCENT GREGG
Assistant United States Attorney
Office and Post Office Address
One St. Andrew's Plaza
Telephone: (212) 791-1970

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JAMIE VINCENT GREGG, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of John S. Martin, Jr., United States Attorney for the Southern District of New York, attorney for the petitioners.

2. I have read the foregoing petition and believe it to be true.

3. The basis of my belief is the affidavit of Joel Lewis, as well as my review of the summonses which are the subject of this proceeding.

Jamie Vincent Gregg
JAMIE VINCENT GREGG
Assistant United States Attorney

Sworn to before me this
5th day of November, 1982

PATRICIA E. TOBIN
Notary Public, State of New York
No. [illegible in original document]
Qualified in Kings County
Commission Expires March 30, 1984

6. Affidavit of (Revenue Agent) Joel Lewis

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue Service,
Petitioners,

v.

TIFFANY FINE ARTS, INC. and its subsidiaries,
including WORLD MEDICAL MARKETING CORP. and
WORLD VIDEO CORP.,
Respondents.

AFFIDAVIT OF JOEL LEWIS

JOEL LEWIS, being duly sworn, deposes and says:

1. I am employed as a Revenue Agent in the office of the District Director of Internal Revenue, with a post of duty at 114 Old Country Road, Mineola, New York. I submit this affidavit in support of the petition to enforce the Internal Revenue Service summons served upon the respondents in the above-entitled case.

2. In my capacity as a Revenue Agent, I am conducting an investigation, one purpose of which is to ascertain the correctness of the consolidated corporate income tax returns filed by Tiffany Fine Arts, Inc. ("Tiffany") and its subsidiaries, including World Medical Marketing Corp. ("World Medical") and World Video Corp. ("World Video") for the fiscal years ending October 31, 1979, and October 31, 1980. One aspect of my investigation into the correctness of Tiffany's consolidated corporate income tax returns concerns possible underreporting of income received and questionable business deductions claimed by Tiffany and its subsidiaries.

3. As part of the investigation, I issued IRS summonses on October 6, 1981, to respondent World Medical in care of Janine Martinelli, Secretary and Treasurer, and Peter Rosenthal, President, and to respondent Tiffany in care of Janine Martinelli, Secretary and Treasurer, and Steven Hofstein, President, directing them to appear before me to give testimony and to produce books, papers, records and other documents as set forth in the summons. Copies of the summonses are annexed to the Petition herein as Exhibit B.

4. The summonses were personally served on October 6, 1981.

5. By letter dated October 16, 1981, the respondents refused to comply with the summonses. A copy of the letter is attached to the Petition herein as Exhibit C.

6. The respondents did not appear on the return date of the summonses and have not otherwise complied with the summonses. The respondents' failure to comply continues to the date of this declaration.

7. The information sought by the summonses is not already in the possession of the IRS.

8. The testimony and documents sought by the summonses may be relevant to and can reasonably be expected to cast light upon the taxpayer's income tax liability for the years under investigation.

9. It is necessary to take the testimony and examine the books, papers, records, documents, and other data demanded by the summons to ascertain the correctness of the tax returns filed by the taxpayer for the years under investigation.

Joel Lewis
JOEL LEWIS
Revenue Agent

Sworn to before me
this 5th day of November, 1982.

JAMIE VINCENT GREGG
Notary Pubic of New York
[remainder of notary seal illegible in original]

7. Affidavit (by Tiffany Officer) In Opposition to Order to Show Cause

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No. M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue Service,
Petitioners,

v.

TIFFANY FINE ARTS, INC. and its subsidiaries,
including WORLD MEDICAL MARKETING CORP. and
WORLD VIDEO CORP.,
Respondents.

AFFIDAVIT IN OPPOSITION TO ORDER TO SHOW CAUSE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

STEVEN R. HOFSTEIN, being duly sworn, deposes and says:

1. I am the president of World Video Corp. ("World Video") and Tiffany Fine Arts, Inc. ("Tiffany"), respondents herein. I am fully familiar with the facts and circumstances had herein and submit this affidavit in opposition to the order to show cause brought by the United States of America to enforce various summonses allegedly served upon Tiffany and respondents World Medical Marketing Corp. ("World Medical") and World Video Corp. ("World Video").

2. Tiffany is a New York corporation which has acted as a holding company for various subsidiaries, including respondents World Medical and World Video since its incorporation in 1978. It has no employees and no officers other than the affiant.

During the relevant period herein, World Medical, a wholly owned subsidiary of Tiffany, was engaged in the licensing of a patented medical device to prevent the occurrence of thromboembolism. The device, entitled the Pedi-Pulsor, is designed to permit bed ridden patients to prevent deep vein thrombosis through leg movement assisted by the Pedi-Pulsor. (A description of the Pedi-Pulsor is annexed hereto as Exhibit A). During the years 1979 and 1980, World Medical sold approximately 50 to 100 licenses to certain persons who promoted the sales of Pedi-Pulsors in their licensed territories. By reason of the structure of the licensing program of the Pedi-Pulsor, licensees of World Medical received significant tax benefits for the years 1979 and 1980.

Primary Objective Of IRS Is To Obtain Names Of Pedi-Pulsor Participants

3. Upon information and belief, a Revenue Agent visited the premises of World Medical over one year ago to request a list of names, addresses and social security numbers of every Pedi-Pulsor licensees. The Agent was advised to contact Mort Robeson, Esq., World Medical's attorney, with any requests for information regarding World Medical. Mr. Robeson subsequently refused to furnish the Agent with a list of the Pedi-Pulsor licensees and so informed him by letter. Thereafter, the summonses were served upon Tiffany and World Medical ("Summonses"), although I did not learn of said Summonses until I was served with the moving papers herein. No summons was served upon World Video.

4. Based upon the Service's previous demand for the list of licensees it would appear quite clearly that the primary purpose of the IRS is not to audit Tiffany and its subsidiaries, but to obtain the names of the Pedi-Pulsor licensees. Tiffany has offered to produce to the IRS all its records. World Medical has offered to produce all its records with the names of the licensees redacted. World Medical has even offered to permit the IRS to randomly check certain of the names to insure their accuracy; but this offer has been rejected by petitioner. The

focus of the Summonses is, allegedly, the tax liability of Tiffany, the parent of World Medical. To affect a complete audit, all records have been offered except the wholesale delivery to petitioner of the respondents' list of participants.

5. The Service's true motive herein is to ascertain and audit the tax returns of respondents' clients, not respondents thereunder. This is evident from the face of the Summons. The Summons issued by the Service requests identification of those persons who bought "lithographs" from taxpayer Tiffany Fine Arts, Inc. "Lithograph tax shelters" are one kind of business venture which the Service has singled out for special audit. *See* IRM 42(17), Exhibit 42(17) 0-1 cited in IRM (CCH) at 7047-43. However, neither Tiffany nor any other corporation in taxpayers' consolidated group has ever sold or sells lithographs. The Service, in its zeal to audit persons who invest in lithographs or engage in other activities targeted by the IRS Tax Shelter Program, has simply assumed that Tiffany sells lithographs. The Service is on a blatant fishing expedition which cannot be condoned pursuant to I.R.C. § 7602.

6. The IRS is clearly able to conduct a complete audit of respondents' clients based upon the documents profferred. Its demand for a list of names, addresses, social security numbers of participants and the conduct of the Revenue Agent reveal without doubt that the primary purpose of the Summonses is to obtain the names of the respondents' clients. The IRS has given no substantive reason for requiring respondents to produce all their books and records to petitioner. The Revenue Agent states merely that "one purpose [of the summons] is to ascertain the correctness of the consolidated corporate returns . . . [including] underreporting of income received and questionable business deductions." Affidavit of Joel Lewis, sworn to on November 5, 1981, ¶ 2.

7. The unstated but obvious purpose of the Summonses is to obtain a list of respondents' clients under the guise of a general audit. Yet, as is clearly set forth in the accompanying memorandum of law, petitioner may obtain such information

only by satisfying the requirements of 26 U.S.C. § 7609(f). This it has failed to do. With respect to the list of participants, that part of the summons should be denied as petitioner has not complied with the statutory requirements of the Internal Revenue Code.

World Video Was Never Served With An IRS Summons

8. This proceeding should be dismissed with respect to World Video as it was never served with any of the Summonses petitioner seeks to enforce herein. Each of the Summonses annexed as Exhibit B to the verified petition of Jamie Vincent Gregg, sworn to on November 5, 1982 ("Petition") and annexed hereto as Exhibit B is addressed either to Tiffany or World Medical. World Video does not appear as a summoned party. Thus it follows that the enforcement proceeding against such party must be dismisseed. I.R.C. § 7604(b).

World Medical Was Never Served With The Moving Papers

9. The enforcement proceeding should also be dismissed with respect to World Medical as said corporation was never served with the moving papers herein. The Revenue Agent, Joel Lewis, served me personally with the moving papers. I told him I could not and would not receive service on behalf of World Medical. I was neither an officer nor an agent of said entity at the time. I resigned from my position at World Medical on October 1, 1979. (A copy of my resignation is annexed hereto as Exhibit C). Thus the proceeding cannot proceed against World Medical as petitioner has failed to obtain jurisdiction over said respondent for the purposes of this enforcement proceeding.

WHEREFORE, it is respectfully requested that this enforcement proceeding be dismissed.

Steven R. Hofstein
STEVEN R. HOFSTEIN

Sworn to before me this
19th day of November, 1982

David M. Rubin
DAVID M. RUBIN
Notary Public, State of New York
No. 31-4710620
Qualified in New York County
Term Expires March 30, 1984

8. Supplemental Affidavit (of Revenue Agent Joel Lewis)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue Services,
Petitioners,

- against -

TIFFANY FINE ARTS, INC. and its subsidiaries,
including WORLD MEDICAL MARKETING CORP. and
WORLD VIDEO CORP.,
Respondents.

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK :
SOUTHERN DISTRICT OF NEW YORK)

JOEL LEWIS, being duly sworn, deposes and says:

1. I am employed as a Revenue Agent in the office of the District Director of Internal Revenue, with a post of duty at 114 Old Country Road, Mineola, New York. I submit this supplemental affidavit in support of the petition to enforce the Internal Revenue Services summons served upon respondents Tiffany Fine Arts, Inc. ("Tiffany") and its subsidiary, World Medical Marketing Corporation. ("World Medical").

2. As noted in my first affidavit, I am conducting an investigation, one purpose of which is to ascertain the correctness of the consolidated corporate income tax returns filed by Tiffany and its subsidiaries, including World Medical and World Video ("World Video") for the fiscal year ending October 30, 1979 and October 31, 1980.

3. One aspect of my investigation into Tiffany and its subsidiaries concerns the possible underreporting of income and questionable business expense deductions claimed by Tiffany and its subsidiaries for the tax years in issue.

4. In July 1980, I made an appointment with Tiffany's accountant to conduct an examination of the books and records of Tiffany. This appointment was cancelled by the accountant.

5. On August 28, 1981 I met with Tiffany's attorney, Morton S. Robson, who declined to permit me to conduct my examination. He stated he believed that the true purpose of my investigation was to obtain certain confidential information, namely, a list of Tiffany's subsidiaries's licensees and purchasers, rather than to obtain information on the correctness of Tiffany's returns. I informed him that in view of his refusal to permit me to conduct my examination, I would be forced to proceed by way of Internal Revenue Services Summons to obtain the necessary information.

6. During my conversation with Mr. Robson, I asked him whether Tiffany was in the business of selling lithographs which, as respondents point out, is one kind of business enterprise which the IRS has singled out for special audit. My reason for asking this question was that I had information from another source that a company called "Tiffany," which did business in Florida, was in the business of selling lithographs. The Tiffany of the instant matter showed no income whatsoever; hence, I questioned whether the "Tiffany," doing business in Florida, and the Tiffany herein, were one and the same. If so, I would be faced with an obvious failure to report income. Yet, when I asked Mr. Robson about this, he would neither confirm nor deny that the Tiffany herein sold lithographs. Thus, out of an abundance of caution, I asked for records relating to sales of lithographs in the summons. Consequently, contrary to respondents' assertion, it was Mr. Robson's recalcitrance—and not the IRS' zealousness—that gave rise to the lithograph issue.

7. On October 6, 1981, summonses were served upon Tiffany and World Medical directing them to appear before me to give testimony and to produce books, records, papers and other documents set forth in the summonses. A copy of the summonses were annexed to the petition herein as Exhibit B. Two summonses were served in an effort to avoid a defense of lack of control over the summoned records. However, as respondents admit, at least World Medical is a wholly owned subsidiary of Tiffany. Upon information and belief, World Video is likewise, as witness by the fact that Mr. Holstein is president of both Tiffany and World Video and that the respondents file a consolidated corporate federal income tax return.

8. The summonses were personally served on October 6, 1981.

9. On October 19, 1981 a letter from Mr. Robson was received by District Counsel Office. In his letter Mr. Robson refused to comply with the summonses, stating that in his opinion, the summonses were not issued in connection with a legitimate examination of World Medical's tax return. A copy of Mr. Robson's letter is annexed hereto to as Exhibit A.

10. In his letter, Mr. Robson incorrectly stated that I have never seen World Medical's tax returns prior to the issuance of the summons. In fact, I had received on September 30, 1981, the consolidated corporate returns of Tiffany for fiscal year 7910, which incorporates on a consolidated basis the tax information relevant to Tiffany's subsidiaries.

11. On October 20, 1981, I contacted Mr. Robson by telephone to respond to his October 16, 1981 letter. I explained to Mr. Robson that I received a consolidated tax return before I issued this summons. I further explained that the summons requested that all records be made available in order that I might properly conduct my examination into the correctness of Tiffany's federal income tax returns.

12. I told Mr. Robson that for example, Tiffany may have underreported its gross receipts because certain recourse and

non-recourse notes provided by the licensees of a product distributed by World Medical did not appear to be included in World Medical's income. In order to determine the correctness of the reporting, I would have to examine the original books of entry and the underlying licensing agreements to match the income reflected by those agreements to the income reported by World Medical. Mr. Robson again refused to comply, stating that he could provide the necessary income information if I provided him with a list of the items I needed to make this determination. Such an approach was and remains wholly unsatisfactory to me. Without examining the underlying licensing agreements, I would be unable to determine whether the respondents have properly reported their gross receipts. Parenthetically, at no time did World Medical offer to permit me randomly check certain of the licensing agreements, as claimed by Mr. Holstein in his affidavit, sworn to November 19, 1982, at ¶ 4. Even if such an offer had been made, it would still be insufficient for the reasons given above

13. I concede that by examining the licensing agreements, I would also be able to identify individuals who have participated in what appears to be an abusive tax shelter. It is certainly possible that once the individuals are identified further inquiry will be made into whether they have correctly reported their income tax liabilities.

14. One final matter must be addressed. Mr. Holstein claims that I served him personally with the petition in this action. I did not. Service was made by an agent with the IRS Brooklyn field office. I do not have any knowledge of what Mr. Holstein allegedly told the agent who served him with the petition. In any event, Mr. Holstein's claim that he stated he could not accept service for World Medical is irrelevant. Mr. Holstein admits to being president of Tiffany, the corporation which wholly owns World Medical. There can be no claim of surprise of prejudice as a result.

WHEREFORE, It is respectfully requested that the petition to enforce the summonses annexed thereto be granted in all respects.

Joel Lewis
JOEL LEWIS

Sworn to before me this
23rd day of November, 1982.

JAMIE VINCENT GREGG
Notary Public, State of New York
[illegible in original]
Commission Expires March 30, 198__ [illegible in original]

9. Transcript of hearing on Order to Show Cause

[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue,
Petitioners

v.

TIFFANY FINE ARTS, INC. *et al.*,
Respondents

November 24, 1982
9:30 a.m.

Before:

HON VINCENT L. BRODERICK,
District Judge

APPEARANCES:

JOHN S. MARTIN, JR.,
United States Attorney for the
Southern District of New York,

JAMIE GREGG,
Assistant United States Attorney

DAVID M. RUBIN,
Attorney for respondents

[2]

THE COURT: You may proceed.

MR. GREGG: This is an action for inforcement of a summons to Tiffany Fine Arts and one of its subsidiaries, World Marketing Corporation. It is an IRS summons pursuant to 7602 of the code and asks for the books and records of Tiffany in connection with an audit of Tiffany's consolidated corporate income tax returns for 1979 and 1980.

The Service issued the summons on October 6, 1981 and they were served upon the secretary and treasurer of Tiffany Fine Arts and World Medical Marketing Corp. The taxpayer has interposed an objection to the summons and we are moving for enforcement of that summons.

The issues that have been raised by the respondents as an objection to enforcement, your Honor, is that the summons is a pretextural one and it's not designed to elicit information relevant to the taxpayers, namely Tiffany Fine Arts and its wholly-owned subsidiaires, World Marketing Corp. and World Video Corp., listed in the caption.

They contend the true purpose of the summons is to obtain the names and addresses of persons who did business with Tiffany and subsidiaries and thereby arguing that we are avoiding the John Doe summons route and avoiding the statutory requirements imposed.

It's the position of the IRS, your Honor, that

[3]

if a summons has a legitimate purpose, namely the audit of a taxpayer, pertaining to information relevant to the audit of a taxpayer, the fact that the audit will reveal information which subsequently may be used in connection with other audits, the Service contends that is a sufficient purpose under 7602 to have the summons enforced.

We concede if revenue agent Lewis, who is the revenue agent on this case, your Honor, discovers names in connection with his audit he would probably follow those names up to see if they are engaged—and, your Honor, there is an alleged abusive tax shelter involved here concerning the sale of distributorships, I believe.

I am not all that familiar with the underlying transactions. But the summons was served pursuant to an audit of Tiffany because there is a question as to whether or not they have properly reported income based on certain recourse and non-recourse notes which was used as a method of financing and selling the distributorships.

THE COURT: Mr. Rubin.

MR. RUBIN: Your Honor, I think Mr. Gregg has capsulized the issue here. We contend that the provision of Section 7609 of the code are the proper provisions to follow.

The issue here is not, although couched in the terms of the liability, the tax liability of the

[4]

respondents, based upon statements of the Internal Revenue Service contained in their manual. Statements of the Internal Revenue agent over a year ago and their conduct to date indicates that the primary objective of this summons is to determine the identity of the individuals who participated in these investment programs.

THE COURT: The agent says no. The agent says that he was assigned the tax returns with your client for audit.

MR. RUBIN: Your Honor, I believe that is an issue of fact, the motivation of the Internal Revenue.

THE COURT: But I have before me his assertion of fact.

MR. RUBIN: I understand that, your Honor. We would contest that on the following basis, your Honor:

Mr. Gregg's statement as if a legitimate purpose is served I don't believe is correct.

THE COURT: Let's me ask you this: The purpose of 7609, as I understand it, is that there not be a John Doe summons issued where there can be no notice going to anybody that the subpoena has been issued without an order of the court.

But we are in the posture now, aren't we, that whether this is something which is 7602 or 7609 it's before me and an order from me is going to deal with precisely the

[5]

same problem that would have been dealt with, if you are correct, that they are interested in third-party liability here and not the liability of the client.

MR. RUBIN: Your Honor, I understand what you are saying but I think that if they were to proceed by a 7609 summons they would have to establish three elements, one of which is the reasonable basis to believe that there is a tax liability of the John Does.

This, your Honor, I don't know can be established, one. It certainly can be established on the papers before the court and in certain cases where this issue has arisen the court has ordered a hearing either in the 7602 summons to determine the motivation of the revenue service or it has proceeded through 7609 summons.

The interesting fact, your Honor, I think very compelling, in many cases such as this where the object is an alleged abuse of tax shelter the Service has proceeded by a 7609 summons in which they have established the three elements of 7609. Here, your Honor, I believe the Service is attempting to evade the fairly simple requirements of 7609 by going through this tax liability.

THE COURT: You said that in your papers but then the government has come up with responsive papers which just contradict that.

MR. RUBIN: I haven't had an opportunity to read

[6]

them.

MR. GREGG: That's correct, I did serve them this morning.

THE COURT: Maybe we ought to take a five-minute recess while you read them.

MR. RUBIN: I suggest if there are issues of fact we have established, one, the stated objective of the IRS.

THE COURT: You haven't established anything. You have put out a supposition. "I think they aren't interested in my tax returns. I think they are interested in the tax returns of somebody else." That is all you have said.

You have tied it to one fact, and that is that they requested information as to lithographs and you pointed out that there was some IRS policy to investigate lithographs and hence this indicates they are not interested in you. That has been adequately dealt with in the answering papers.

MR. RUBIN: The other point, your Honor, is that the revenue agent requested the list of taxpayer participants in the programs over a year ago. I would think, your Honor, that at least we have established a question which we are entitled to have a hearing as to the motivation of the Service.

[7]

Of course, I would expect the Service to come back in an affidavit stating that we have the objective of the tax liability of the respondents, but I think we are entitled to pierce that conclusory statement, your Honor, just as you have categorized my statements as presumptuous.

THE COURT: Now, I get a notice from the IRS that we are going to audit your returns, bring in such and such a paper. I am then entitled to drag the IRS into court saying that I really have questions about their motivation, they don't really want to audit me because I should be audited but they want to audit me because I am a communist?

MR. RUBIN: No, I don't think that is so. Absolutely not, your Honor. I shouldn't say absolutely not. I can't respond to that. But I think I understand the court's position and my response would be the following: That the provisions of 7609 were enacted to prevent or to limit the IRS's summons powers under Section 7602, and that is the critical issue here; that the court in reaction to the case of U.S. versus Basiglia, I think is

the proper case, decided that there should be a balance between the right of the IRS to determine tax liability of taxpayers and, two, that protect the privacy of individuals.

Here, your Honor, there is abundant evidence, I believe, at least preliminarily, to establish that, in our

[8]

opinion, the primary motivation of the Service is, in fact, to determine the tax—to seek to determine the tax liability not of the respondents but of the participants and their programs.

I don't think there is a great burden, your Honor, to follow the provisions of 7609 to insure that the Service is meeting that balance. This is an ex-party proceeding and the standards of proof or the threshold standards are not terribly significant.

There have been two cases, your Honor, which we do cite in the memorandum of law, U.S. versus Barter Systems and U.S. versus Gottlieb, which Mr. Gregg tells me, your Honor, appealed but the status of those cases is that the two district courts held specifically that where the primary purpose was to identify the taxpayer participants, not the respondent's tax liability, they could not evade the provisions of 7609.

I think Mr. Gregg in stating that if a legitimate purpose is to determine the tax liability of the respondents, I think that is entirely incorrect. I think the primary purpose has to be the tax liability of the respondents, not a purpose.

THE COURT: Well, if it is a purpose to establish the tax liaiblity of your clients does the agent not have to go into information with respect to the

[9]

business that your client did and customers your client had?

MR. RUBIN: Yes, and we have offered to provide the Service with all our records with the redaction of the identities of the participants, and we have further provided that we will, at random, provide them with certain individuals who they

may want to go back and check from the entries into the corporate books back to the individuals.

But, your Honor, there is a third case on the point, U.S. versus Constantidi, and the court there upheld the summons but the case there was entirely different than the case here, your Honor.

In that case the tax liability of the respondent, which was also a barter exchange program, the tax liability of the respondent had been raised prior to the issuance of the summons. Here there is no evidence that the Service's initial motivation—other than the statement of the revenue agent, there is no statement that there is reason to believe that there tax liability exists.

In Constantidi the court said, and there was the same issue, the tax liability of the respondent was almost established although not the quantity of the liability, but the tax liability was established before the summons was issued and the District Court in that case, your Honor, said, "Well, if the primary purpose is to establish his, the respondent's, tax liability, it's too bad that"—they

[10]

didn't say it's too bad but they said, "It's permissible for the Service to establish the identity of the defendants in the course of furthering the primary objective".

MR. GREGG: I would like to comment, your Honor.

THE COURT: Let me just ask you a question. Doesn't the Service have the right on a completely random basis to pick out returns for audit?

MR. RUBIN: It certainly does, your Honor. But where we have put up what I believe is a substantial question as to the motive of the Service we are entitled to at least a hearing to determine, one, if this was a product of a random selection by the Service and, two, if in fact the motivation was related to ascertaining the tax liability of the John Does.

That, your Honor, I believe we are entitled to and I believe the courts in Barter Systems and Gottlieb held hearings. Whether the appeal, as I understand it, was not from—and Mr. Gregg can correct me, but the appeal is not from the right to have a hearing to determine the motive of the IRS but from the findings of fact which resulted from that hearing.

So I am not saying, your Honor, they are not entitled to audit returns randomly but it this case, your Honor, I believe we have put the nub of the question into the case to require at least a hearing on the subject.

[11]

Otherwise I feel that the provisions of 7609 would be emasculated.

THE COURT: Mr. Gregg.

MR. GREGG: Your Honor, I would like to make several comments concerning some of the statements that Mr. Rubin has made.

First, the respondents have argued that there was no evidence that the Service was intereseted in the tax liability of the respondents. As clearly stated in both in Revenue Agent Lewis' initial affidavit and his supplemental affidavit this issue was raised before by another representative of respondents who said—

THE COURT: Whose name is misspelled in respondent's papers.

MR. GREGG: It is R-O-B-E-S-O-N.

THE COURT: That is wrong.

MR. GREGG: It's R-O-B-S-O-N.

THE COURT: Yes.

MR. GREGG: I have it as R-O-B-S-O-N in my papers, your Honor.

THE COURT: It was misspelled in the respondent's papers.

MR. GREGG: Mr. Robson did raise this issue initially and had related to Revenue Agent Lewis that he had issued the summons without even having the tax returns

[12]

of Tiffany in front of him. Revenue Agent Lewis explained to Mr. Robson at the time that that statement was incorrect. He affirms that statement in his affidavit now.

So I would disagree with the statement that there is no evidence that the Service is interested in liability of Tiffany. There is abundant evidence and it has always been the position of the Service that they are interested in the tax return of Tiffany. The issue we have conceded, and we will concede, is that information discovered in connection with that audit may lead to subsequent audits.

THE COURT: Why isn't that an effective emasculation of 7609? 7609 was enacted by Congress as a specific reaction to something pending in the Supreme Court.

Why, if it is so that you can move from step 1, audit of A, to step 2 through 100, audit of all of A's customers, why haven't you just completely wiped out a section of the law that Congress thought it necessary to put in to protect the public from an overreaching revenue service?

MR. GREGG: I agree, your Honor. I think your Honor summed it up in the last sentence specifically. 7609 was designed to prevent overreaching by the Service. It was certainly not designed to be an inhibition upon their ability to obtain information relative to tax audits.

[13]

What your Honor would be suggesting is that the Service would have to ignore relevant information concerning any avoidance of tax that comes up in connection with an audit of a particular taxpayer.

I can make a analogy for your Honor, that being the cases which involve dual purpose allegations in civil and criminal tax

investigations. The purpose of the Service may have criminal implication. There may be a criminal tax investigation ongoing, but the Supreme Court has ruled that despite all the guarantees attendant upon the adversary process presented by a criminal situation the Service is still entitled to obtain all the records of a taxpayer until such time as it makes a referral to the Justice Department for prosecution.

I think that analogy would apply here. That situation in a criminal civil dual investigation presents the same type of potential for abuse, and I would suggest even a greater abuse in the sense that someone's liberty may be at stake, than the situation here, and yet the Supreme Court has made the judgment that even though the Service may have available to it both the civil and criminal rule in the context of a special agent investigation, a summons served by a special agent is still enforceable.

MR. RUBIN: Your Honor, I think the issue is not

[14]

the duality of the audit, although I would wonder really once the Service obtains these records whether they will pursue Tiffany, but even if there is a duality the essential issue is not the duality but what is primary.

The primary issue of of the summons is criminal. If the primary summons of a summons is to obtain the identities of the John Does that is what is binding, your Honor. We are not suggesting to inhibit the Service in general audits, your Honor.

We will provide all our records. We will provide the Service with random access to various participants to go beyond the records, your Honor. I cannot believe that the Service in auditing a return of a fairly significant entity would want to check 150 or 50 out of 50 or 150 out of 150 participants.

They might want to check a number of them at random, and this we are willing to do because we understand that they are entitled to review the books of the respondents, and if this is

their true and primary objective then we believe the compromise we have preferred is a fair one. If they want to get the other records we are not saying they are not entitled to them.

We are saying the proper way to get those records is through 7609.

One other point, your Honor, if I may. I do

[15]

believe at least we are entitled to a hearing at least with respect to the 7602 summons. But I also feel we are entitled to a dismissal of the motion not only on the failure to file the statutory and administrative steps but I believe there was at least, your Honor, a failure of service of the order on World Medical, and I think although World Video is named as a respondent there was never a summons issued to World Video. It would like the court—

THE COURT: Isn't this a group of wholly-owned companies that are filing consolidated tax returns?

MR. RUBIN: Correct.

THE COURT: As a practical matter then what difference does it make? The service was made on Tiffany. Tiffany files the tax return on a consolidated basis for the other two companies. You are being extremely technical, aren't you?

MR. RUBIN: That is my job, isn't it, your Honor?

THE COURT: Maybe that is your job but what you want is wheels to be spinned. You are here now representing all three companies.

MR. RUBIN: That's correct, Judge.

THE COURT: We are now in a position where I can issue an order to you to comply. There is no question that all three companies had notice of this subpoena. They had notice through the chief officer of the parent company who

[16]

was also a chief officer of the other companies.

MR. RUBIN: I saved my technical argument for last.

THE COURT: You didn't feel it was that strong.

MR. RUBIN: I do feel substantively that we are entitled to the relief requested.

THE COURT: Well, I don't agree. I think there is a sufficient showing in the papers, particularly the reply papers served by the government, that the government's interests or the Internal Revenue Service's interest is in an audit of the consolidated returns of these companies and I grant the government's application.

MR. RUBIN: You won't consider ordered a hearing to determine the government's motivation?

THE COURT: No, I will not. I am satisfied that on the papers there a clear factual statement as against a hypothesis and I see no reason to order a hearing.

Thank you, gentlemen.

MR. GREGG: If I may submit an order to your chambers this afternoon, your Honor?

THE COURT: Yes.

MR. RUBIN: Can we have it submitted on notice?

MR. GREGG: It would be a standard notice that we use which merely relates that the conditions of 7602 have been satisfied, orders that the summons as drafted—

[17]

we will make the modification and stipulate that the modification is as per no lithographs because we have been shown that Tiffany doesn't deal in lithographs.

So I can provide the order to Mr. Rubin right now when we go back to my office.

THE COURT: You understand it will not be on notice. He will show you a copy of the form of order.

MR. RUBIN: I don't know what the hesitancy is to put it on notice.

THE COURT: The hesitancy is that this is a two-week stint here in Part 1 and I am reluctant to carry over responsibilities from Part 1.

All right, get it typed up while you are over there and show him a copy.

MR. GREGG: I can show him one that I have used in identical 7602 situations.

THE COURT: Make a copy of that and interlineate adjustments.

MR. GREGG: I will take care of that, your Honor.

10. Order of U.S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M-18-304

UNITED STATES OF AMERICA and JOEL LEWIS,
Revenue Agent, Internal Revenue Service,
Petitioners,

v.

TIFFANY FINE ARTS, INC. and its subsidiaries,
including WORLD MEDICAL MARKETING CORP. and
WORLD VIDEO CORP.,
Respondents.

Mr. Gregg
#82-2296
U.S. DISTRICT COURT
FILED
NOV 26 1982
S.D. OF N.Y.

ORDER

This matter having come on for hearing by Order to Show Cause dated November 5, 1982, directing the respondents to appear on November 23, 1982 to show cause why an order should not be entered compelling the respondents to give testimony and to produce the books, records and other papers demanded in the Internal Revenue Service summonses served upon it on October 6, 1981 (copies attached), and the Order, together with the petition and exhibits attached thereto having been served personally upon respondent Tiffany Fine Arts, Inc. and World Video Corporation in compliance with the provisions of the Order to Show Cause dated November 5, 1982, and the respondents having submitted papers in opposi-

tion to enforcement of the summonses, and having appeared on the return date of the Order to Show Cause,

NOW, upon all of the papers and proceedings herein, it is hereby

ORDERED, that the respondent shall comply fully with the Internal Revenue Service summonses served upon it on October 6, 1981 by appearing before Revenue Agent Joel Lewis, or some other authorized officer of the Internal Revenue Service, at 114 Old Country Road, Mineola, New York, on or before December 13, 1982 at 10:00 o'clock in the forenoon of that day, and by producing at that time the documents and records referred to in the Internal Revenue Service summons, which form the basis of the Order to Show Cause herein and by giving all testimony described in the summonses.

Failure to comply with this order may subject the respondent to a charge of contempt of court.

Dated: New York, New York
November 24, 1982

VINCENT L. BRODERICK
UNITED STATES DISTRICT JUDGE

11. Decision of U.S. Court of Appeals for the Second Circuit.

The decision of the U.S. Court of Appeals for the Second Circuit is reproduced at Appendix A of Petitioners' Petition for a Writ of Certiorari.